IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2290 OF 2005

Bhaskar Hari Pandit ... Applicant

versus

State of Maharashtra ... Respondent

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Mr.D.Y. Kedar, i/by Bhagat & Associates, for the Applicant.

Mr.K.V. Saste, A.P.P., for the Respondent.

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CORAM : A.M.KHANWILKAR,J.

13th April 2005

P.C.:

. Heard Counsel for the parties. Perused the record. The offence in question is a serious offence. However, I find substance in the argument canvassed on behalf of the Applicant. The Applicant has been named as accused essentially on the allegation that he had motive to commit murder of deceased and the strong

circumstance put against him is that he was last seen together with the deceased and nylon rope was recovered from his residence, which must have been used for strangulating the deceased. However, there is substance in the argument of the Applicant that even accepting the prosecution case as it is, the time when the Applicant was seen together with the deceased, was around 6 p.m. in the evening, which cannot be said to be odd hours. Moreover, as both the Applicant and the deceased were hailing from the same locality and were working at the same place, their moving together in the evening at 6 p.m. cannot be said to be unusual.

. Insofar as nylon rope recovered at the instance of the Applicant from his residence is concerned, I find substance in the argument of the Applicant that such nylon rope can ordinarily be found in any home, especially in a village such as where the Applicant was staying. Once again, on the basis of recovery of the rope it cannot be said that chain of circumstances is complete, because there is no evidence on record to suggest that the same rope was used for

strangulation of the deceased.

. I also find substance in the argument of the Applicant that other four accused named in the F.I.R. have already been released on bail. Insofar as co-accused Bhau Bhagaji Dhangar is concerned, there is evidence that he was seen together with deceased before the death of the deceased. Even so, that accused has been released on bail. Therefore, the Applicant is entitled for partiy along with the said accused.

. There is also substance in the argument of the Applicant that the participation of the Applicant in the commission of offence becomes doubtful in view of the medical certificate issued by the medical officer, Kalyan District Jail, dated 31st January 2005 at page 23. It clearly mentions that the Applicant is inflicted with leprosy and it is aggravated to such an extent that he cannot even hold spoon by single hand to have his food.

. Accordingly, the only circumstance that remains is motive alleged by the prosecution

about the illicit relation of the Applicant with the wife of the deceased, but motive, by itself, may not be sufficient to prove the guilt.

. Taking overall view of the matter, in my opinion, this is a fit case for grant of bail. Accordingly, this application is allowed on the following terms.

(A) Applicant is directed to be released on bail in connection with CR.No.I-34/2004 registered with Murbad Police Station on executing personal bond in the sum of Rs.10,000/- (Rupees Ten thousand only) with one or two local sureties in the like amount.

(B) Applicant shall not influence the prosecution witnesses nor shall tamper with the prosecution evidence in any manner whatsoever.

(C) Applicant shall report to the concerned police station on first Sunday of every English calendar month between

10 a.m. to 4 p.m.

(D) Applicant shall co-operate for the early disposal of the trial. If the trial Court is of the opinion that the Applicant is in any manner responsible for the delay in disposal of the trial, that fact be recorded in the roznama, which can be a ground for cancellation of bail.

(A.M.KHANWILKAR,J.)